

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**ROY PAUL MARTINEZ,**

**Plaintiff,**

**v.**

**No. CV 15-0442 MV/LAM**

**GREGG MERCANTEL, et al.,**

**Defendants.**

**ORDER TO SHOW CAUSE**

**THIS MATTER** is before the Court *sua sponte*. On May 24, 2015, pursuant to the Court's order setting deadlines [*Doc. 17*], Defendants filed a *Martinez* report [*Doc. 23*] in which they ask the Court to dismiss Plaintiff's case for various reasons, including failure to exhaust administrative remedies (*see Doc. 23* at 31-40). Plaintiff's response to the *Martinez* report was due June 10, 2016 (*see Doc. 22*), but nothing has been filed. *See also* [*Doc. 17* at 4] (notifying the parties "that the *Martinez* report may be used in deciding whether to grant summary judgment on Plaintiff's claims, whether by motion or *sua sponte*"). Plaintiff's failure to comply with the Court's order setting deadlines indicates a lack of interest in litigating his claims which may subject him to dismissal of this action for lack of prosecution. *See Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962) ("The authority of a court to dismiss sua sponte for lack of prosecution has generally been considered an 'inherent power,' governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.") (footnote and citations omitted), *Olsen v. Mapes*, 333 F.3d 1199, 1204, n.3 (10th Cir. 2003) (same), and *Martinez v. Internal Revenue Service*, 744 F.2d 71, 73 (10th Cir. 1984) ("Courts have the inherent power to impose a variety of sanctions

on both litigants and attorneys in order to regulate their docket, promote judicial efficiency, and deter frivolous filings.”) (citations omitted). In addition, “[t]he failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion.” D.N.M.LR-Civ. 7.1(b). Therefore, the Court will require Plaintiff to show cause why this case should not be dismissed.

**IT IS THEREFORE ORDERED THAT no later than Tuesday, July 5, 2016**, Plaintiff shall either file with the Court a response to Defendants’ *Martinez* report, or file with the Court a response to this Order showing cause why this case should not be dismissed. Whichever he chooses to file, Plaintiff must serve a copy on Defendants. *Plaintiff is also hereby notified that failure to respond to this Order may result in dismissal of this case without prejudice and without further notice.*

**IT IS SO ORDERED.**

  
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**LOURDES A. MARTÍNEZ**  
**UNITED STATES MAGISTRATE JUDGE**